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## **BULLETIN! BULLETIN! BULLETIN!**

### **DOL POSTS APPEAL FORM FOR COBRA PREMIUM REDUCTION DENIAL**

The American Recovery and Reinvestment Act of 2009 (ARRA, commonly known as the “Economic Stimulus Package”) created a COBRA premium subsidy whereby certain qualified beneficiaries known as “Assistance Eligible Individuals” or AEIs may pay only 35% of the normal COBRA premium for a limited period of time. The employer would pay the other 65% of the COBRA premium and be reimbursed for these costs in the form of a payroll tax credit.

The Department of Labor (DOL) has posted on its web site the application form a qualified beneficiary may complete to request an expedited review by the DOL of the AEI’s denied request by a former employer for the reduced COBRA premium. The “Application to the U.S. Department of Labor for Expedited Review of Denial of COBRA Premium Reduction” is 5 pages long, not including an overview of ARRA’s premium reduction provisions, a check list the applicant may use to validate their potential eligibility for the premium reduction, and three pages of detailed instructions on completing the application form. The instructions provide examples of the kinds of documents that the applicant may wish to include with the application to document their status as an AEI and their eligibility for the reduced COBRA premium. The instructions also note that in reaching a determination, the DOL may share information with the applicant’s former employer or plan administrator.

The application form is available at <http://www.dol.gov/ebsa/COBRA/main.html> and is for use only by AEIs covered under private-sector group health plans. AEIs covered under group health plans sponsored by federal, state or local governments, and AEIs covered under a state’s “mini-COBRA” law (where the group health plan is not subject to the federal COBRA requirements) should contact the CMS-sponsored premium assistance continuation coverage help desk toll-free at (866) 400-6689 or via e-mail at [continuationcoverage@maximus.com](mailto:continuationcoverage@maximus.com). CMS anticipates posting their equivalent application on their web site soon.

The DOL’s web page also includes a link to a form the AEI may complete to submit additional documents for review if the application for review has been previously submitted. The AEI may complete the DOL application for expedited review online, or the application can be printed and submitted by mail.

### **CAL-COBRA AMENDED TO CONFORM TO ARRA**

On May 12, 2009, California Governor Arnold Schwarzenegger signed AB 23, which amends California’s health benefits continuation coverage laws, known as Cal-COBRA, to conform to the premium subsidy provisions in the ARRA. This new law takes effect immediately. Cal-COBRA applies to group health insurance and HMO policies written in California for plans sponsored by employers with fewer than 20 employees.

AB 23 amends Cal-COBRA to require insurers and HMOs to send written notices to qualified beneficiaries who had or will have a qualifying event between September 1, 2008 and December 31,

2009. The notices must include a description of ARRA's COBRA subsidy provisions and explain who is eligible for the subsidy, the amount of premium the person will pay and how long a person has to elect coverage. Enrollment materials must be included for those who have not yet elected coverage.

For those who have a qualifying event after May 12, 2009, the notice must be provided within 14 days of receiving a notice of a qualifying event.

AB 23 also creates for people covered by plans subject to Cal-COBRA, a second election period similar to that in ARRA. Individuals who did not previously elect Cal-COBRA or who elected it and dropped it and who otherwise qualify as an AEI, have 60 days from the date of the notice to elect continuation coverage.

Qualifying beneficiaries requesting premium assistance may submit a written document or other information to verify that they were involuntarily terminated. The insurer or HMO must accept this information as sufficient unless a reasonable and timely determination is made that the information is legally insufficient to establish involuntary termination of employment.

An insurer or HMO may request verification of involuntary termination from the former employer. The request must be mailed or faxed within 7 business days of the request for premium assistance and the employer has 10 calendar days from receipt to respond in writing. If the insurer or HMO cannot verify involuntary termination on a timely basis, either the premium subsidy must be granted or the insurer or HMO must send a denial letter explaining the right to appeal under ARRA.

## **HEALTH CARE REFORM ON FAST TRACK**

On April 29, 2009 (the 100th day of President Obama's Administration) Congress passed a budget that lays out some basic principles for health care reform: making health care coverage affordable, guaranteeing Americans a choice of health plans and physicians, investing in prevention and wellness, improving patient safety and quality care, and making health care reform fiscally sustainable. Democrats inserted a parliamentary measure that will allow health care reform to be passed by a simple majority in the Senate, avoiding a possible filibuster.

Congressional leaders have committed to passing a comprehensive health care reform bill by July 31. Details are still being worked out and in all likelihood, there will be differences between House and Senate versions that will need to be resolved after the August recess, even if both houses can meet the July 31 deadline.

## **SAN FRANCISCO INCREASES HEALTH CARE SPENDING REQUIREMENT**

On April 22, officials from the City and County of San Francisco announced that health care spending requirements will increase in 2010. Effective next year, employers with 100 or more employees will be required to spend at least \$1.96 per hour per covered employee on health care, up from \$1.85 in 2009. Employers with at least 20 employees, but less than 100, will need to spend at least \$1.31 per hour, up from \$1.23. Employers with less than 20 employees will continue to be exempt from the health care spending requirement.

Earlier this year, the 9th U.S. Circuit Court of Appeals declined to review a three-judge panel's decision that the health care spending ordinance was not pre-empted by the Employee Retirement Income Security Act. The Golden Gate Restaurant Association has indicated that it intends to ask the U.S. Supreme Court to review that ruling.

Garner Consulting does not practice law. Please seek qualified counsel if you need legal advice. For employee benefits consulting, please call Zaven Kazazian or Andy Keowen at (626) 351-2300. Please visit our web site at [www.garnerconsulting.com](http://www.garnerconsulting.com), where you can find back issues of our bulletins.